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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 30

FLORENCE J. M. COOK, PETITIONER,

vs.

ARTHUR W. COOK

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

PETITION FOR CERTIORARI FILED FEBRUARY 13, 1951.

CERTIORARI GRANTED APRIL 23, 1951.

SUPREME COURT OF THE UNITED STATES

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[fols. 1-2]

IN WINDSOR COUNTY COURT, STATE OF VERMONT

Docket No. 352

ARTHUR W. COOK

vs.

FLORENCE J. M. COOK

PETITION FOR ANNULMENT

DOCKET ENTRIES

EVERETT L. HATHORN

With draw 3/2/50, Fucci & Fucci, 3/2/50

Entered January 4, 1950—Summons December 16, 1949.
Order for Publication issued December 16, 1949.
No minor children.
Affidavit of publisher filed January 17, 1950—Order for publication complied with.
December Term 1949—

March 2, 1950. Heard. Miles, P. J., Taylor, J. Libellant files motion to amend petition. Amendment allowed and petition amended as per motion.

March 3, 1950. Hearing resumed. Hearing continued to March 27, 1950 at 9:30 A.M.

March 6, 1950. Petitionee's motion for expenses and suit money filed.

March 20, 1950. Order of Court with acceptance of service filed.

April 3, 1950. Order of March 9, 1950 for payment of $250.00 by Petitioner to Petitionee complied with in open court. Hearing resumed. With Court.

April 12, 1950. Letter of Attorney for the Petitioner filed. Petitioner's request for findings of fact filed. Petitioner's brief filed.

May 27, 1950. Findings of fact filed.

June 2, 1950. Petitioner's exceptions to findings filed.

June 5, 1950. Petitionee's motion for judgment filed.

June 16, 1950. Petitionee files motion for fees.

June 22, 1950. Decretal Order filed. Purported marriage of Feb. 5, 1943 is null and void. As to the marriage of Dec. 18, 1944, the petition is dismissed.
June 23, 1950. Hearing on Petitionee's motion for fees. Cushing, P. J. Order made that the petitioner pay to petitionee's attorneys, Fucci & Fucci, the sum of $300.00 in 3 Payments. First payment due August 1, 1950—Second payment due September 1, 1950 and third payment due October 1, 1950. Exceptions to petitionee. Petitioner's exceptions to judgment filed July 13, 1950.
July 20, 1950. Petitioner's Bill of Exceptions filed.
July 31, 1950. Certificate to Clerk of the General Term of Supreme Court issued.
September 21, 1950. Fifteen printed copies of the Case filed by libellant. Fifteen printed copies of libellant's brief filed.
October Term 1950—Heard and With Court, Adams, J.
November Term 1950—Judgment that the purported marriage between the parties of February 5th, 1943 is null and void, is affirmed. Judgment that the petition is dismissed as to the Marriage of December 18th, 1943, is reversed. It is adjudged that the purported marriage between the parties of December 18, 1943 is null and void.

[fol. 3] IN WINDSOR COUNTY COURT

[Title omitted]

PETITION FOR ANNULMENT

To the Honorable Windsor County Court, holden at Woodstock, within and for the said County of Windsor and the State of Vermont, comes Arthur W. Cook, of Windsor and respectfully represents that:

1. That he is a resident of the Town of Windsor, and the State of Vermont, and has resided continuously therein for the past several years prior to the date of this petition, but has been absent therefrom since January 1st, 1939, by reason of his service with the United States Navy.

2. That on the 6th day of February, 1943 at Elizabeth City, North Carolina, he, the said Arthur W. Cook, was

joined in marriage with one Florence Jean Monteford, then residing at Philadelphia, Pennsylvania.

3. That the said parties lived together as husband and wife at Newport News, Virginia, where your petitioner was temporarily stationed by the United States Navy, until about the 1st day of June, 1943.

4. That on or about the 1st day of June, 1943, your petitioner learned that the said Florence J. M. Cook, was, at the time of her marriage to him, married to another man named, Alfred H. Mann, and that the said Mann was still living and that the marriage had never been dissolved.

5. That upon discovering the said Florence J. M. Cook was married, and had a husband, living, your petitioner immediately disaffirmed his said marriage and refused to cohabit with the said Florence J. M. Cook.

6. That on the 18th day of December, 1943 the said Florence J. M. Cook represented to the said Arthur W. Cook, that she had been legally divorced from the said Mann and was free to marry and the said parties, Arthur W. Cook and Florence J. M. Cook, on the 18th day of December, 1943, at Elkton, in the County of Cecil, in the State of Maryland were again joined in marriage.

7. Your petitioner further represents that the representations made by the said Florence J. M. Cook to him on the 18th day of December, 1943, were wholly false and made by the said Florence J. M. Cook for the express purpose of [fol. 4] inducing the said Arthur W. Cook to marry her the second time and the said Florence J. M. Cook threatened the said Arthur W. Cook with prosecution of certain criminal offenses of which, at that time, the said Arthur W. Cook believed hi self to be guilty, if he refused to marry her the second time and that the sole purpose of your petitioner, Arthur W. Cook entering into the said second marriage was to protect himself from what he thought the said Florence J. M. Cook would do if he refused to marry her on the said 18th day of December, 1943.

8. That since the 18th day of December, 1943 your petitioner has learned that the said Florence J. M. Cook did not secure a divorce from the said Mann, but is still married to him.

9. That your petitioner further avers that he does not know of the actual whereabouts of the said Florence J. M. Cook, although he has made diligent effort so to learn.

10. That no libel for divorce, libel for divorce from bed and board, petition for seperate maintenance or petition for annulment of marriage has been brought previously by either the said Arthur W. Cook, or the said Florence J. M. Cook, except a Libel for divorce brought by the present petitioner, Arthur W. Cook, in the Territory of Hawaii, which was discontinued, and a Libel for Divorce brought by Arthur W. Cook against Florence J. M. Cook in the Windsor County Court, which Libel was never entered in the Court, and a prior petition for annulment which was entered and discontinued due to lack of service on the said Florence J. M. Cook.

Therefore, your petitioner, Arthur W. Cook, respectfully prays that this Honorable Court will issue to him a decree, decreeing the said marriages solomnized between the said parties on the 6th day of February, 1943, and on the 18th day of December, 1943, to be null and void, and to grant the said petitioner, Arthur W. Cook such further relief as shall to the said Court seem just and equitable.

Dated at Windsor in the said County this 3rd day of December, 1949.

(S.) Arthur W. Cook, Petitioner.

STATE OF VERMONT,
Windsor County, ss.

At Windsor this 3rd day of December, 1949, Arthur W. Cook, personally appeared before me and made oath to the foregoing petition.

(S.) Leon A. Hitchcock, Notary Public.

[fol. 5] IN WINDSOR COUNTY COURT

[Title omitted]

AFFIDAVIT OF ARTHUR W. COOK

Now comes Arthur W. Cook, petitioner in the above entitled cause, and upon his oath disposes:

1. That he, the said Arthur W. Cook, does not know the whereabouts of the said Florence J. M. Cook, mentioned in the said petition and has no means of ascertaining her whereabouts.

2. That the said Florence J. M. Cook, receives mail at 396-26th Street, Oakland, California, which is the home of her sister, which mail is forwarded to her at an address unknown to the said Arthur W. Cook, and the said sister refuses to reveal the whereabouts of the said Florence J. M. Cook.

3. That he, the said Arthur W. Cook, has attempted to ascertain the whereabouts of the said Florence J. M. Cook, by making inquiries of her relatives, particularly her sister, and has been refused information relative to her whereabouts. The said Arthur W. Cook has a brother residing very close to the last known residence of the said Florence J. M. Cook, to wit at 396-26th Street in Oakland, California and that the said brother at the request of the said Arthur W. Cook, caused a search to be made for the said Florence J. M. Cook or any information leading to her whereabouts, by a hired detective, and such search failed to locate the said Florence J. M. Cook or to disclose any information indicative to her whereabouts.

4. That the said Arthur W. Cook further avers that inquiries have been made of the Sheriff's Department in Oakland, California where the said Florence J. M. Cook is last known to have resided and that the said Department was unable to locate the said Florence J. M. Cook, or to learn of her wher-abouts.

5. That the said Arthur W. Cook has made a diligent inquiry and does not know where the Libellee, Florence J. M. Cook resides.

Therefore, the said Arthur W. Cook respectfully prays that the Clerk of this Honorable Court issue an order for notice by publication in accordance with Section 3225 of the Revised Statutes of Vermont.

[fol. 6] Dated at Windsor, in the County of Windsor and in the State of Vermont, this 9th day of December, 1949.

(S.) Arthur W. Cook

Duly sworn to by Arthur W. Cook. Jurat omitted in printing.

[fol. 7] IN WINDSOR COUNTY COURT

SUMMONS

STATE OF VERMONT,
Windsor County, ss:

To any Sheriff or constable in the State, Greeting:

By Authority of the State of Vermont, you are hereby commanded to summon Florence J. M. Cook, whereabouts, unknown, to appear before the County Court, holden at Woodstock, in the County of Windsor, in the State of Vermont, and also notify her to cause her appearance to be entered with the Clerk of said Court, at his office in Woodstock, in the County of Windsor, in the State of Vermont, on or before the expiration of twenty-one days from the date of service hereof, then and there in said Court to answer the foregoing Petition for Annulment of Arthur W. Cook, of Windsor in the County of Windsor, in the State of Vermont, and to show cause, if any she may have, why the prayers of said Petition should not be granted.

Fail not, but service and return make within twenty-one days from the date hereof.

Dated at Woodstock, in the County of Windsor, this 16th day of December, A.D., 1949.

(S.) George C. Brockway, Clerk.

[fol. 8] IN WINDSOR COUNTY COURT

[Title omitted]

ORDER FOR PUBLICATION

Whereas, Arthur W. Cook of Windsor in the County of Windsor and State of Vermont, has duly filed his Petition For Annulment of Marriage in the County Court of said Windsor County, setting forth his marriage to Florence J. M. Cook, formerly of Newport News in the State of Virginia and now of parts unknown; that he hath resided for 6 full years last past in the State of Vermont and for at least six months in the County of Windsor; that the purported marriage between these parties was performed

on Feb. 6, 1943 at Elizabeth City, North Carolina; that on the 1st day of June, 1943, the said Arthur W. Cook learned that the said Florence J. M. Cook was, at the time of the marriage, was married to another man, named Alfred H. Mann, and that the said Alfred H. Mann was then living and the marriage had not been dissolved. The said Arthur W. Cook then disaffirmed the marriage and ceased to live with the said Florence J. M. Cook. That on the 18th day of December 1943, the said Florence J. M. Cook represented to the said Arthur W. Cook that she had been divorced from the said Alfred H. Mann and the said Arthur W. Cook and the said Florence J. M. Cook were again joined in marriage and later the said Arthur learned that she had not been divorced.

The Petition for Annulment further sets forth that no libel for divorce, libel for divorce from bed and board, petition for separate maintenance or petition for annulment of marriage has been brought previously by either of these parties except, a Libel for Divorce brought by the present petitioner, Arthur W. Cook, in the Territory of Hawaii, which was discontinued, and a Libel for Divorce brought by Arthur W. Cook against Florence J. M. Cook in the Windsor County Court, which Libel was never entered in the Court, and a prior petition for annulment which was entered and discontinued due to lack of service on the said Florence J. M. Cook.

Wherefore the, Petitioner, Arthur W. Cook, prays that the purported marriages between these parties, of February 6, 1943 and December 18, 1943 be adjudged as null and void and a decree of nullity be issued.

[fol. 9] And it appearing to the clerk of this court, upon satisfactory proof by way of affidavit, that the domicile of the said Florence J. M. Cook is unknown to the said petitioner so that said petition cannot be served upon her personally;

It is therefore ordered that the said Florence J. M. Cook be required to appear before the Windsor County Court holden at Woodstock in the County of Windsor and State of Vermont, and also to cause her appearance to be entered with the clerk of said court, at his office in said Woodstock, on January 30, 1950, then and there in said court to make answer to said petition; and that said petitioner do cause this order to be published for three successive weeks in the Vermont Journal, a newspaper

published at Windsor in said Cou y of Windsor, the last publication to be at least twenty-one days prior to the said January 30, 1950, which shall be deemed sufficient notice to the said Florence J. M. Cook.

Dated at Woodstock in the County of Windsor and State of Vermont this 16th day of December, A. D., 1949.

(S.) George C. Brockway, Clerk, Windsor County Court.

Everett L. Hathorn, Esqr., Windsor, Vermont, Attorney for the Petitioner.

[fol. 10] IN WINDSOR COUNTY COURT

[Title omitted]

PUBLISHER'S AFFIDAVIT

Now comes the Vermont Newspaper Corporation, by its clerk and upon its oath deposes:

1. That it publishes a certain newspaper known as the Vermont Journal, at Windsor, County of Windsor and the State of Vermont.

2. That the an order for notice by publication in the above entitled cause, Arthur W. Cook vs Florence J. M. Cook, was published in the said Vermont Journal for three (3) successive weeks, to wit: December 21st, 1949, December 29th, 1949 and January 5th, 1950, the last of which publications, being more than twenty-one (21) days prior to January 30, 1950. Dated at Bellows Falls, County of Windham, and in the State of Vermont, this 10th day of January, A. D., 1950.

(S.) M. Almeda Hanley, Clerk.

Duly sworn to by M. Almeda Hanley. Jurat omitted in printing.

[fol. 11] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR LEAVE TO AMEND PETITION

Now comes the Petitioner, Arthur W. Cook, by his attorney, and respectfully asks leave of the Court to Amend his petition in the following manner:

That paragraph number eight (8) be amended to read as follows:

"Your Petitioner further alleges that the said Florence J. M. Cook did not secure a valid Divorce from the said Alfred J. Mann, but that the said Florence J. M. Cook did secure what purports to be a decree of divorce at Miami, Florida on September 11th, 1943, but that the said Decree is void and of no force for the following reasons:

a. Because the law of the State of Florida required the complaintant to have been a bona fide resident for a period of ninety (90) days prior to instituting a Libel for Divorce, and that the said Florence J. M. Cook was not then, nor ever has been a resident of Florida, and the said Court was wholly without jurisdiction in the matter.

b. That the said Florence J. M. Cook did in the said matter falsely swear that she had been a resident of the State of Florida since December 30th, 1942, to wit at Jacksonville, Florida from the said December 30th, 1942 until April 21st, 1943 at which time she removed to Miami on the 21st day of April, 1943, that she had since reside- in Miami continuously since April 21st, 1943, and that she intended to remain permanently in Miami, Florida.

c. The said Florence J. M. Cook went to Florida for the express purpose of getting a divorce and wholly failed to establish herself as a bona fide resident of the said State of Florida.

That paragraph ten (10) of the said petition be amended by inserting therein the following allegations:

That the said Florence J. M. Cook brought a action for seperate maintenance against the said Arthur W.

Cook in Circuit Court of the First Judicial Circuit of the Territory of Hawaii, which court granted her a seperate maintenance order.

Dated at Windsor this 2nd day of March, 1950.

Arthur W. Cook, by (S.) Everett L. Hathorn, His Attorney.

[fol. 12] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR EXPENSES

Now comes the Petitionee, Florence J. M. Cook, by her attorneys, Fucci and Fucci, in the above entitled cause of action and respectfully represents:

1

That she is now living in Oakland, California and is without funds and is unable to obtain same to travel to Woodstock, Vermont and to pay her attorneys to properly prepare and defend the cause of action now pending against her in the Windsor County Court.

2

That her minimum travel expenses and board and room will amount to Two hundred and fifty Dollars ($250.00).

Wherefore, She prays that she may be awarded the sum of Two hundred and fifty Dollars ($250.00) from the said Petitioner, and reasonable suit money.

Dated at Hartford, in the said County of Windsor, this 6th day of March, 1950.

(S.) Florence J. M. Cook, by Fucci & Fucci, Her Attorneys.

[fol. 13] IN WINDSOR COUNTY COURT

[Title omitted]

ORDER GRANTING MOTION FOR EXPENSES

The motion of the petitionee, Florence J. M. Cook, for travel allowance in the sum of Two hundred and fifty Dol-

lars ($250.00) from Oakland, California to Woodstock, Vermont came on for hearing, and the said parties were represented by their attorneys at the said hearing, and after hearing thereon;

It is hereby ordered and decreed that the petitioner, Arthur W. Cook pay to the Petitionee, Florence J. M. Cook the sum of Two hundred and fifty Dollars ($250.00), said sum to be payable to the Petitionee upon her appearance in the Windsor County Court on March 27, 1950.

Dated at Woodstock, Vermont, this 9th day of March, 1950.

(S.) Raymond L. Miles, H. E. Taylor, Judges, Windsor County Court, December Term, 1949.

Service accepted, further service waived.

(S.) Everett L. Hathorn, Attorney for Arthur W. Cook

[fol. 14] IN WINDSOR COUNTY COURT

[Title omitted]

REQUEST FOR FINDINGS

Now comes the petitioner in the above entitled cause, by his attorney, Everett L. Hathorn and respectfully requests that the Court find the following facts:

1. That the Petitioner and the Petitionee were first married, February 5th, 1943 at Jersey City, South Carolina and at that time the Petitionee was already married and had a husband living and that the marriage between the Petitioner and the Petitionee was null and void.

2. That sometime in the Spring of 1943 the Petitioner learned that the Petitionee had a prior husband living and became apprehensive of his own situation and advised and requested the Petitionee to secure a divorce from her first husband, one Alfred J. Mann, and to then remarry the said Petitioner.

3. That the said parties at that time believed that the Petitionee could secure a valid divorce by the Petitionee temporarily staying or claiming residence in Florida and accordingly the Petitionee with the aid and assistance of the Petitioner went to Florida for the express purpose of getting a divorce.

4. That upon consulting attorneys in Florida the Petitionee found that it was necessary for a person to have a intention to remain permanently in Florida in order to gain a residence and to fulfill that requirement the Petitionee deceived the Florida Courts by testifying that she had lived in Florida for a much longer period of time than she actually had and that she had intentions of remaining in Florida permanently and making that her home when actually she had intentions of returning to the Petitioner and to remarry him.

5. That the said Petitionee did secure what purported to be a decree of divorce by deceiving the said Florida Courts as to the facts of her actual domicil.

[fol. 15] 6. That under the Florida law it was necessary for the complaining party to have actual residence in the State in order to secure a divorce and that in order for the Petitionee to gain that residence she must have an intention to live and remain in Florida and that the decree rendered by the Florida Court without such Court having jurisdiction over the martial res was then and is now null and void.

7. That the Petitioner did not know until August, 1949 as to what constituted residence in the State of Florida; but had theretofore known nothing of the misrepensentations made by the Petitionee in securing her Florida decree.

8. That the said divorce decree rendered to the Petitionee in Florida was null and void.

9. That after securing the said Florida decree the said parties were remarried on the 18th day of December, 1943, at Elkton, Maryland and that that marriage is null and void because the said Petitionee did at that time have a husband living.

Respectfuily submitted, Arthur W. Cook, by, His Attorney, (S.) Everett L. Hathorn.

[fols. 16-22] [Petitioner's briefs omitted in printing.]

[fol. 23] IN WINDSOR COUNTY COURT

[Title omitted]

FINDINGS OF FACT

This is a petition seeking the annulment of two marriages between the parties—one solemnized at Elizabeth City,

North Carolina February 6, 1943 and the second solemnized at Elkton, County of Cecil, Maryland, on December 18, 1943. The only ground relied upon is that at the time of each of said marriages the petitionee was the wife of one Alfred H. Mann. The petitioner appeared personally and by his attorney, Everett L. Hathorn, Eqr. Petitionee appeared personally and was represented by Fucci & Fucci, Esquires. Hearing was had before the Court and, upon adjournment, the case entered "With the Court".

Upon a consideration of the statements of counsel, oral testimony and the exhibits in the case, the Court finds the following facts:

1. A purported marriage was solemnized between the parties at Elizabeth City, North Carolina on February 5, 1943. Petitioner's Exhibit 1 purports to be a certified copy of the record thereof, is hereby referred to and made a part hereof and is found as a fact.

2. Thereafter they lived together in Virginia for about two months. At the time of this marriage petitioner knew the petitionee had been married before but assumed she had been divorced. The parties became acquainted in 1942 and the petitioner then knew her as Mrs. Albert Mann.

3. The petitioner is a resident of and has had a residence in Windsor, Vermont, since 1940. He has been in the United States Navy since March 8, 1938.

4. About two months after the marriage the petitioner discovered that the petitionee was the wife of Alfred H. Mann at the time of the marriage and it was then suggested by the petitioner and agreed upon by the parties that the petitionee should go to Florida, remain there long enough to establish a residence for divorce purposes, secure a divorce from Mann there and then return to the petitioner and they would marry again. Part of the expense of the trip to Florida and of the divorce action was paid by the petitioner. [fol. 24] Florida was chosen as the place where the divorce was to be obtained because Florida would be the nearest and best place to secure a divorce. The petitionee left Yorktown, Virginia, where the petitioner was and had been stationed and where the parties had lived together since their marriage in April, 1943; remained in Florida a short time; was at the Philadelphia Naval Hospital between April and August, 1943; returned to Florida in August, 1943. The petitioner went to Florida for a visit in July or August. The

petitionee was not then living in Jacksonville. The petitionee never intended to reside in Florida. Whatever time was spent by the petitionee in Florida in 1943 was solely for divorce purposes and with no intention on her part to establish a bona fide residence there, and she intended to remain there only long enough to obtain her divorce. This was understood and agreed upon by the petitioner.

5. The petitionee was granted a divorce from Mann by the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida on September 10, 1943. This appears from Petitioner's Ex. 2, which purports to be a copy of the decree and the same hereby referred to and made a part hereof and found as a fact. By this decree Mrs. Mann was restored to her maiden name of Florence Monteford.

6. Two or three days after the decree of divorce the parties met in Newport News, Virginia. On September 10, 1943, the petitioner was stationed at Yorktown, Virginia and thereafter he saw the petitionee every day. On December 18, 1943, the parties were again married at Elkton, Maryland. This appears from the testimony and from Petitioner's Ex. 3, which purports to be a certified copy of the marriage record. It is hereby referred to and made a part hereof and found as a fact. The parties lived together for periods totaling about one year between December, 1943 and January, 1949.

7. On October 25, 1948 the petitioner instituted an action for divorce against the petitionee in the Circuit Court of the First Judicial Circuit in the Territory of Hawaii. In his petition therein he alleged under oath, among other things, that he was then and for more than two years had been a bona fide resident of the Territory of Hawaii; that he and the petitionee were legally married on or about December, 1944, in Elkton, Maryland, and that the parties last lived together as husband and wife in Honolulu, Hawaii and were living separate and apart. The petitionee filed a special [fol. 25] plea to the jurisdiction alleging that the libellant was not a bona fide resident as he alleged in his petition. This action was discontinued December 20, 1948. A certified copy of these proceedings is Petitioner's Ex. 5, and is hereby referred to and made a part hereof and found as a fact.

8. On December 21, 1948, the petitioner instituted a proceeding for separation against the petitioner in the Circuit Court for the First Judicial Circuit of the Territory of

Hawaii in which he again alleged under oath that the parties were legally married at Elkton, Maryland on or about December, 1944. What disposition was made of this action does not appear.

9. On March 29, 1949, the petitionee instituted an action for separate maintenance against the petitioner in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in which she alleged, among other things, that she and the petitioner were married at Elkton, Maryland on December 18, 1944; that both were then residents of City and County of Honolulu, Territory of Hawaii, and that the parties last lived together in Honolulu and were then living separate and apart. On April 7, 1949, a decree for the petitioner therein was entered in said cause permitting the petitioner therein to live separate and apart from the petitionee therein for a period of two years because of cruel treatment, neglect and personal indignities on the part of the petitionee therein and ordering the petitionee therein to pay to the petitioner therein $200.00 a month for six months, the first payment to be made May 1, 1949 and at the expiration of six months $150.00 per month for eighteen months. This is still in effect and the petitioner here is paying in accordance therewith. The petition and decree are Plaintiff's Ex. 6 and 8 respect*fully* and are hereby referred to and made a part hereof and found as a fact.

10. In letters written to the petitionee by the petitioner under dates of August 30 and September 2, 1948, the petitioner professes his love for the petitionee and expresses his desire that she come to live with him and in the September 2nd letter calls himself her husband. These letters are Petitionee's Exs. B and C, and so far as material hereto are referred to and made a part hereof, and found as a fact.

11. In the Spring of 1943, when the parties agreed that the petitionee should secure a divorce in Florida and when she consulted with Florida attorneys, she found that it was necessary for a person to have an intention to remain [fol. 26] permanently in Florida in order to gain a resident and to fulfill that requirement the petitionee testified that she had lived in Florida much longer than she actually had and that she had intentions of remaining in Florida permanently and making her home when actually she had intentions of returning to the petitioner and remarrying him. The petitioner knew about her intentions to return to him as soon as the divorce was obtained.

12. That the petitionee did secure what purported to be a decree of divorce by deceiving the Florida Court as to the facts of her domicile.

13. There is no evidence as to what the law of Maryland was on December 18, 1943, as to the validity of the purported Florida divorce or as to the validity of the remarriage of these parties on December 18, 1943.

14. In 1943, petitionee wrote the petitioner from Miami, Florida, what the Florida law regarding divorces was.

15. On Wednesday, March 29, 1950, the parties met in Norfolk, Virginia and that night the petitioner registered at the Gilbert Hotel in that city with the petitionee as husband and wife under the name of Mr. and Mrs. A. W. King. They slept together that night.

16. That under the Florida law it was necessary for the complaining party to have actual residence in the State in order to secure a divorce and that in order for the petitionee here to gain that residance she must have had an intention to live and remain in Florida, which she did not have.

As to the purported marriage of February 5, 1943, it is declared and adjudged to be null and void. As to the marriage of December 18, 1944 the petition is dismissed.

All the exhibits in the case are referred to and made a part of these findings insofar as material hereto, and the transcript of the evidence, if furnished, is made a part hereof, all for the purpose of testing whether the findings are warranted by the evidence and for the purpose of reviewing questions saved by exceptions during the trial.

Dated at Woodstock in the County of Windsor and State of Vermont, this 25th day of May, A. D., 1950.

(S.) Raymond L. Miles, H. E. Taylor, Judges, Windsor County Court.

[fol. 27] IN WINDSOR COUNTY COURT

[Title omitted]

PETITIONER'S EXCEPTIONS TO FINDINGS OF FACT

Now comes the Petitioner, Arthur W. Cook, by his attorney, Everett L. Hathorn, and takes exceptions to the refusal of the Court to find that the marriage solemnized

between the Petitioner and the Petitionee on December 18th, 1943 to be null and void by the reason of the Petitionee's having a husband living at that time.

The Petitioner further excepts to the ruling of the Court, contained in the Findings of Fact, dismissing the Petition as to the marriage solemnized on the 18th of December, 1943.

Dated at Windsor, Vermont, this 1st day of June A. D., 1950.

Arthur W. Cook, by, (S.) Everett L. Hathorn, his Attorney.

[fol. 28] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR JUDGMENT

Now comes the Defendant, Florence J. M. Cook, by her attorneys, and moves for judgment on the Findings of Fact as rendered by the Court in the above entitled matter.

Dated at Hartford, Vermont, this 3rd day of June, 1950.

Florence J. M. Cook, by (S.) Fucci & Fucci, her Attorneys.

[fol. 29] IN WINDSOR COUNTY COURT

[Title omitted]

MOTION FOR FEES

Now comes the Petitionee, Florence J. M. Cook, by her attorneys, Fucci & Fucci, in the above entitled cause of action and respectfully represents:

1

That a finding of facts were filed by the Court on May 27, 1950, which said findings dismissed the Petitioner's Annulment Petition.

2

That the Petitioner on June 2, 1950 excepted to said findings.

3

That the attorney for the Petitioner has indicated to the Petitionee's attorneys that he intends to appeal such findings to the Supreme Court, and has on June 7, 1950 filed a Bill of Exceptions.

4

That the Petitionee is informed and believes that the cost on her behalf in connection with such appeal will amount to approximately Five Hundred ($500.00).

5

That there is a motion now pending for reasonable suit fees, which said motion has not been acted upon.

6

That the Petitionee is without funds to protect her interest on such appeal and is without funds to pay her attorneys for the services rendered to date.

Wherefore, the Petitionee prays that this present motion be consolidated with the motion now pending for reasonable attorneys fees so that a hearing may be had on both motions.

Dated at Hartford, in the said County of Windsor, this 14th day of June, 1950.

(S.) Florence J. M. Cook; (S.) Fucci & Fucci, her Attorneys.

[fol. 30] IN WINDSOR COUNTY COURT

ARTHUR W. COOK

vs.

FLORENCE J. M. COOK

JUDGMENT

The above entitled cause of action came on for hearing before the Windsor County Court seeking the annulment of two marriages between the said parties. The parties appeared personally and were represented by their respective attorneys of record.

After hearing thereon, and, upon adjournment, the case was entered "with the Court".

A finding of facts by the Court was filed May 27, 1950, and as a result of such finding, it is hereby ordered, adjudged and decreed:

That the purported marriage of February 5, 1943 is null and void, and as to the marriage of December 18, 1944, the petition is dismissed.

Dated at Woodstock, in the County of Windsor and State of Vermont, this 22nd day of June, A. D. 1950.

(S.) Raymond L. Miles, H. E. Taylor, Judges, Windsor County Court.

[fol. 31] IN WINDSOR COUNTY COURT

[Title omitted]

PETITIONER'S EXCEPTIONS TO JUDGMENT ORDER

Now comes the Petitioner, by his attorney, Everett L. Hathorn, and excepts to the Judgment Order filed the 22nd day of June, A. D., 1950, dismissing the Petition as to the second marriage and to the refusal of the Court to declare the said second marriage null and void.

Dated at Windsor, in the County of Windsor, State of Vermont, this 11th day of July, A. D., 1950.

Arthur W. Cook, by (S.) Everett L. Hathorn, his Attorney.

[fol. 32] IN WINDSOR COUNTY COURT

[Title omitted]

BILL OF EXCEPTIONS

The above entitled cause of action came on for Hearing before the Windsor County Court, December Term, 1949, seeking the annulment of two marriages between the said parties. One solemnized at Elizabeth City, North Carolina, February 5th, 1943 and the second solemnized at Elkton, Maryland, December 18th, 1943. The only ground

relied upon is that at the time of each of said marriages the petitionee was the wife of one Alfred H. Mann.

The Findings of Fact by the Court was filed May 27th, 1950, wherein the Court found the first such marriage to be null and void and dismissed the Petition as to the second marriage. The Petitioner took, filed, and was allowed exceptions to the refusal of the Court to find the said second marriage null and void and to the ruling of the Court to dismiss the Petition as to the second marriage.

On June 22nd, 1950 the Court filed a Judgment Order, adjudging the marriage of February 5th, 1943 to be null and void and dismissed the Petition as the marriage of December 18th, 1943 to which order the Petitioner has excepted and such exception is hereby allowed.

All of the Pleadings, Findings of Fact, Orders are hereby referred to and made a part hereof, and cause passed to the Supreme Court.

Dated at St. Albans in the County of Franklin, State of Vermont, this 13th day of July A. D., 1950.

(S.) Raymond L. Miles, Presiding Judge.

[fol. 33] Caption omitted.

[fol. 34] In Supreme Court of Vermont for Windsor County

#1237

Arthur W. Cook, Petitioner,

vs.

Florence J. M. Cook, Petitionee

Judgment

This case comes into this Court upon exceptions by the Petitioner, Arthur W. Cook, to the judgment and decision of Windsor County Court at the December Term 1949 thereof, which judgment was that the purported marriage between these parties of February 5, 1943 to be null and void and to the judgment that the petition for annulling the marriage of December 18, 1943 is dismissed.

The Petitioner, Arthur W. Cook, comes by Everett L. Hathorn, Esqr., his attorney and the Petitionee, Florence J. M. Cook, comes by Fucci and Fucci, Esqrs., her attorneys and the parties through their attorneys are duly heard by this Court at the October Term 1950 thereof.

And it is considered and adjudged by the Court here, at the November Term 1950 thereof, that the judgment of Windsor County Court that the purported marriage between the parties of February 5, 1943 is null and void is affirmed. That the judgment of Windsor County Court that the petition is dismissed as to the marriage of December 18th, 1943 is reversed. It is adjudged that the purported marriage between the parties of December 18, 1943 is null and void.

A true record,

Attest:

(Signed) George C. Brockway, Clerk.

[fol. 35] In Supreme Court of Vermont for Windsor County

Clerk's Certificate as to Date of Judgment

I, George C. Brockway, Clerk of Windsor County Court and Clerk of the Supreme Court of Vermont for Windsor County, and having by law the custody of all files, dockets and records in said Courts, do hereby certify to the following facts, Viz:

That on the 31st day of July, 1950, the case of Arthur W. Cook vs. Florence J. M. Cook, an action for the annulment of marriage, was entered in the Supreme Court of Vermont, from an appeal from the judgment of Windsor County Court;

That this case was heard by the Supreme Court of Vermont at the October Term 1950 thereof and at the November Term 1950 of the said Supreme Court the following judgment entry was made by said Supreme Court; Viz:

> "Judgment that the purported marriage between the parties of February 5th, 1943 is null and void, is affirmed. Judgment that the petition is dismissed as to the Marriage of December 18th, 1943, is reversed. It is adjudged that the purported marriage between the parties of December 18, 1943 is null and void."

That this judgment of the said Supreme Court of Vermont was entered on the records of the Supreme Court of Vermont for Windsor County by me on the 15th day of November, 1950, as directed by the said Supreme Court of Vermont.

Dated at Woodstock in the County of Windsor and State of Vermont this 10th day of February, A. D. 1951.

George C. Brockway, Clerk of the Supreme Court of Vermont for Windsor County.

[fol. 36] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES

No. 373, Misc. —, October Term, 1950.

On petition for writ of Certiorari to the Supreme Court of the State of Vermont.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR WRIT OF CERTIORARI, ETC.—April 23, 1951.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 30.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis, Vide 373 Misc. File No. 55,194 Vermont, Supreme Court, Term No. 30. Florence J. M. Cook, Petitioner, vs. Arthur W. Cook. Petition for writ of certiorari and exhibit thereto. Filed February 13, 1951. Term No. 688 O.T. 1950.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 30

FLORENCE M. COOK,
Petitioner,

v.

ARTHUR W. COOK,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

PETITIONER'S BRIEF

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FRANK D. REEVES,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 30

FLORENCE M. COOK,

Petitioner,

v.

ARTHUR W. COOK,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VERMONT

The Opinions Below

The trial court made findings of fact and what amounted to conclusions of law thereon without formal opinion. (R. 12). The Supreme Court of Vermont rendered a formal opinion (Original transcript P. 34, 36-37), entered a decree thereon, November 15, 1950. The opinion is reported under the style *Cook* vs. *Cook*, 116 Vt. , Atl. 2nd.

Jurisdiction

The judgment of the Supreme Court of Vermont was entered on November 15, 1950. (R. 22). This petition was presented within 90 days from the entry of the judgment below. Jurisdiction is invoked under Section 237 (b) of the Judicial Code, 28 U.S.C. Sect. 344 (b). The ques-

tions presented were raised by a reversal of a judgment of the Windsor County Court, and the entry of an appellate decree annulling the marriage of the parties hereto by avoiding a divorce obtained by petitioner in the State of Florida.

Questions Presented

1. Did the Vermont Court err in avoiding a Florida divorce of petitioner, at the suit of her second spouse upon the sole ground that petitioner did not acquire a 'bona fide' residence in the divorce forum, without a finding as to the marital domicile of the parties to the divorce.

   a. In the absence of evidence or finding of the matrimonial domicile of the parties to a divorce, may a sister state refuse to accord full faith and credit to the decree of the divorce forum solely upon a finding that the residence of the libellant was not bona fide in that it was only designed to secure a divorce.

2. Where by petitioner's Florida decree of divorce the domicile of the respondent is found as a fact may Vermont, at the suit of the second spouse of petitioner, deny full faith and credit and avoid the divorce decree on the ground that petitioner's residence in Florida was solely for the purpose of securing a divorce.

3. Does the rationale of the second Williams case permit a second spouse who induced petitioner to secure a divorce in Florida, in which the parties both appeared and participated, to relitigate jurisdictional issues in a sister state where none of the parties were ever matrimonially domiciled.

4. Where parties to a divorce both appeared and participated in the proceedings may a sister state, at the suit of a second spouse, in which state parties to the second marriage never cohabited, relitigate the jurisdictional finding of the divorce forum, where the fact of second mar-

riage has been judicially found by a third court in whose jurisdiction the parties were admittedly domiciled as husband and wife.

Statement

Petitioner at the instigation and with the financial help of respondent left Newport News, Virginia, where she had a meretricious relationship with respondent, and secured a divorce in Florida, in which proceeding petitioner's husband appeared and participated. (Original transcript P. 20). Several months later she married respondent in Elkton, Maryland and the parties returned to New Port News. Thereafter, respondent, who was an officer in the Navy, was assigned to Hawaii, where the parties again lived as man and wife, (R. 14). Three suits affecting the domestic relationship of the parties here were filed in the Territorial Court of Hawaii. In two of these suits respondent claimed under oath that he was and had been a resident of Hawaii for two years and that petitioner and he were domiciled there. (R. 14).

Petitioner filed a suit for separate maintenance in the same Court, affirming the allegation of residence and domicile in Hawaii and respondent appeared, with counsel, and a decree was entered on April 7, 1946, ordering payment of maintenance for a period of two years. (R. 15). In 1949, while the maintenance order was still pending and extant, respondent initiated the instant cause, seeking the annulment of his marriage to petitioner because her Florida decree was void because of her simulated residence in Florida. In this proceeding the respondent claimed residence in Vermont since 1938, although asserting that he had been absent from the state some ten years. (R. 13). It further appeared that while the instant cause was pending, but unserved on petitioner, a non-resident of Vermont, petitioner and respondent cohabited. (R. 16).

The trial Court did not make a finding as to the matrimonial domicile of petitioner and her former husband at the time of the divorce in Florida, but rested its finding on the fact that petitioner never intended to permanently live in Florida and only resided there for the purpose of securing a divorce, and intended upon its entry to return to and marry respondent. (R. P. 15). The trial Court, however, accorded full faith and credit to the Florida decree and dismissed the annulment suit as to the Maryland marriage of the parties hereto (R. 14). Upon appeal, however, the Supreme Court of Vermont, upon the authority of the second Williams case, and upon the showing that petitioner's residence was solely for the purpose of getting a divorce and marrying respondent, reversed, and decreed that the Florida decree was void. (Original transcript, P. 34, 36-37).

Summary of Argument

Petitioner contends that the second Williams case, 325 U. S. 324 L. Ed. , does not relieve a sister state of the obligation of full faith and credit to a foreign judgment where the forum rendering the judgment had jurisdiction of the res and the parties personally, in the absence of a want of power apparent on the record. The obligation of a Court to extend full faith and credit is not diminished because it might conclude a jurisdictional issue in a different way or because evidence dehors the record in the trial forum, although available, was not presented.

Your petitioner suggests that neither the State of Vermont or respondent acquired in Vermont a right, interest, or property in the marriage contract of petitioner and her prior husbandman as would permit either of them to do in Vermont that which neither litigant or stranger could or can do in the forum of the judgment.

Points 1 and 2

Respondent's annulment suit depends on a finding by the Vermont trial Court that the Florida decree was void for lack of jurisdiction. This finding is bottomed by the appellate court on testimony adduced in Vermont contrary to the evidence produced before and finding by the Florida court as to the "domicile" of petitioner. Without recourse to the doubtful expedient[1] of finding lack of jurisdiction over petitioner, as complainant there, at the suit of a stranger by matter not apparent on, but 'dehors' the record, it is striking that such was its undertaking without reliance on the consecrated rubric that Vermont had an overriding interest in the marriage contract between petitioner and her first husband. The fact, found by the Florida Court, that it had jurisdiction over the marital res, or of the equally compelling circumstance that both parties were before the Florida Court did not merit judicial notice in the appellate court's opinion although considered to be of considerable moment by this Court.[2]

Florida, under any circumstances, is the final arbiter of the criteria of domicile or residence of its citizens. The Florida statute does not, in so many words, require "domicile" as a prerequisite to a suit for a divorce, but fixes a 'period of actual residence' of the complainant as the

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[1] As a general rule, unless authorized by statute, a stranger to the record has no standing directly to attack a judgment either by a motion (or petition) in the original proceedings, or by independent suit, irrespective of whether the grounds go to the jurisdiction to render the judgment void or to defects making the judgment voidable only. *Tyler* v. *Aspinwall* 73 Conn. 493; *Suiter* v. *Suiter* 74 O. App. 44, 57 N.E. 2nd. 616; *DeMarigny* v. *DeMarigny*, Fla. , 43 So. 2nd. 442; *Van Slyke* v. *Van Slyke*, 186 Mich. 324, 152 N.W. 921.

[2] Cf. *Williams* v. *North Carolina*, 325 U. S. 226; *Sherer* v. *Sherer*, 334 U.S., 343.

jurisdictional condition precedent. While other States have judicially used 'residence' and 'domicile' interchangeably, no reason appears to treat the statutory language in any other way than in its natural connotation.[3]

In the case of *Curley* v. *Curley*, 198 So. 584, at page 586, the Court said:

> "Therefore it is our conclusion that the burden of proof in this case was on the plaintiff's wife to show that she resided in Florida for a period of ninety days prior to the date of filing the suit for divorce and at the time of taking up her residence in Florida she had the capacity to acquire a separate domicile of her own in the State of Florida."

It is apparent from the record also that there is no property right or interest of respondent existing at the time which was affected in any way by the decree of divorce obtained by petitioner from her husbandman.

Under these conditions, there would seem to be no justification for failing to follow the dictates of Section 1738, 28 U. S. Code,[4] and extend full faith and credit to the Florida decree where, as it appears, Florida would not permit such a relitigation at the suit of a stranger.[5] It would seem to slender a tendril to found the vacation of a formal judgment that a woman's intention to marry a serv-

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[3] "In order to obtain a divorce the complainant must have resided ninety days in the State of Florida before filing the bill of complaint", Florida Statutes Annotated Section 65:02.

[4] Such acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the Courts of such State, territory or possession from which they are taken.

[5] *Johnson* vs. *Muelberger*, __ U.S. __, 95 L. Ed. 411, (1950); *DeMarigny* v. *DeMarigny*, 43 So. 2nd 442.

iceman, located in another state, would necessitate a finding of a lack of domicile.

The justification for the relitigation of the jurisdictional issues existing in the second Williams case (325 U. S. 234) do not obtain in the case at bar. Here there is no invasion of the proprietary interest of state for the status of domiciliaries. Petitioner and her first husband were never domiciled, residents or visitors in Vermont except in this litigation. The divorce of petitioner and her husband cannot be attacked by either of them outside of the State of Florida by virtue of the Sherer and Coe,[6] *infra*, and by no third person, whatever his or her interest, in the State of Florida.

Moreover, in the instant case, the proper criteria and standards of proof for collaterally or directly attacking a judgment based upon domicile have been completely disregarded by the Court below. Here we do not have parties foisting the relaxed divorce laws of a sister state upon the hapless state of domicile but the spectacle of a state, a stranger to the resident, parties and domicile refusing full faith and credit at the suit of a stranger to the divorce forum and decree.

However strong judicial distaste for "easy" divorce may grow the remedy could not consistently be "easy" annulment through the office of denial of full faith and credit. In regard to the divorce of parties, not domiciles of the inquiring state, and save intervening property rights of third party resident litigants, there would seem to be no cogent reason to prefer the propriety of the subsequent determination of any one of the remaining forty-seven to the final determination of the first state. In the case at bar even the temporarily successful respondent should be wary for should the jurisdictional jealousies of

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[6] *Sherer* v. *Sherer*, 334 U.S. 343; *Coe* v. *Coe*, 334 U.S. 378.

Maryland, Virginia and Hawaii be aroused, his "domicile" in Vermont might be hard to reconcile, upon "relitigation", with his birth in Massachusetts, marriage in Maryland, its consummation in Virginia or his oath in Hawaii.

Points 3 and 4

Petitioner and her first husband appeared in the Florida Court [7] and the issue as to residence for divorce purposes and question as to the marital domicile were properly before it for determination. Full opportunity to litigate those issues was open to the petitioner and her first husband. However under the rule as announced in the Sherer and Coe cases, *supra*,[8] these issues were not open to relitigation in Vermont by the parties' second spouses or strangers, when such avenues of attack were not permitted in the divorce forum. In the absence of the overriding interest of a state in the contract of marriage of its domiciliaries and even if jurisdiction had been acquired by publication alone, the decree would have been secure from collateral attack under either the first [9] or the second Williams case.[10] However paramount the interest of a state in the status of its domiciliaries, such interest must be evinced in a form and manner consistent with the fundamental requisites of "due process" and "full faith and credit". A state may not, under the guise of effectively supervising the marriage status of one of its citizens, render nugatory the exercise of a similar power by a sister state over its domiciliaries. Thus revealed the claim negates itself.[11] The opposite conclusion leaves its un-

[7] Opinion of the Court below.

[8] *Sherer* v. *Sherer, supra; Johnson* v. *Muelberger, supra; DeMarigny* v. *DeMarigny, supra.*

[9] 317 U. S. 287.

[10] 325 U. S. 226.

[11] *Davis* v. *Davis* 305 U. S. 32.

welcome debris at the doorstep of petitioner's first husband, without the casual notice 'by publication'; although time will doubtless produce some unwitting, but perplexed, citizen with the dilemma of relying on Florida for validity of her dower and legitimacy of her children, or to some more considerate State and Court for relief from Vermont's alternative.

Here Mann and petitioner were not domiciled in Vermont. No one knows, as far as this record is concerned, where Mann was domiciled, or where the matrimonial domicile of their marriage was. There is no finding that Florida did not have jurisdiction of the 'res' of the marriage. The failure of the Vermont Court to give full faith and credit is a further invitation to Courts to turn deaf ears to the warning of this Court in the *Sherer* case, *supra*, and require litigants "to run the gauntlet of such collateral attack" in the several states before its validity outside of the divorce forum may be established. Nor does the spectre of the litigation in Hawaii or Florida hanging in the balance at the whimsy of respondent's litigious impulses recommend the voiding of the Florida and Hawaii decrees.

Conclusion

In consideration of the premises it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

HENRY LINCOLN JOHNSON, JR.,
CURTIS P. MITCHELL,
Attorneys for Petitioner.

FRANK D. REEVES,
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Of Counsel.

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Supreme Court of the United States

October Term, 1951

No. 30

FLORENCE M. COOK, *Petitioner*,

v.

ARTHUR W. COOK, *Respondent*.

RESPONDENT'S BRIEF ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

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Supreme Court of the United States

October Term, 1951

No. 30

FLORENCE M. COOK, *Petitioner,*

v.

ARTHUR W. COOK, *Respondent.*

RESPONDENT'S BRIEF ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

THE OPINIONS BELOW

The trial court made findings of fact and what amounted to conclusions of law thereon without formal opinion. (R. 12). The Supreme Court of Vermont rendered a formal opinion (Original transcript P. 34, 36-37), entered a decree thereon, November 15, 1950. The opinion is reported under the style *Cook* v. *Cook,* 116 Vt. 374, 76 A2d 593.

JURISDICTION

The judgment of the Supreme Court of Vermont was entered on November 15, 1950. (R. 22). This petition was presented within 90 days from the entry of the judgment below. Jurisdiction is invoked under Section 237 (b) of the Judicial Code, 28 U. S. C. Sect. 344 (b). The questions presented were raised by a reversal of a judgment of the Windsor County Court, and the entry of an appellate decree annulling the marriage of the parties hereto by avoiding a divorce obtained by petitioner in the State of Florida.

QUESTIONS PRESENTED

(1.) After finding as a matter of fact that Petitioner here never established a legal residence for the purpose of divorce as required by the Statutes of the State of Florida and never intended to reside in Florida and that whatever time she spent in Florida was solely for divorce purposes and she intended to remain there only long enough to obtain her divorce, and did obtain a purported divorce by fraud and perjury upon the Florida Court in regards to her residence in Florida and that such purported divorce was not valid under the Florida laws, (Findings of Fact Sections 4, 11, 12, 16.) did the Supreme Court of Vermont err in holding that such deception by Petitioner upon the Florida Court involving its jurisdiction was such as to invalidate the decree and relieve the Vermont Court from giving recognition and force and effect to such decree.

(2.) In a suit for annulment in the domiciliary state of Petitioner, are the Courts of that state required to give force and effect to a fraudulently obtained decree of divorce in the courts of a sister state where the fraud went to the jurisdiction of the court rather than the cause for divorce?

STATEMENT

Respondent has been in the United States Navy since March 8, 1938. He has been a resident of and has had a residence in Windsor, Vermont since 1940. (F. F. 2). Petitioner entered into a marriage ceremony with Respondent at Elizabeth City, North Carolina February 5, 1943. (F. F. 1).

About two months after the marriage, Respondent here discovered that Petitioner was the wife of another man. Respondent and Petitioner agreed that she should go to Florida, remain there long enough to establish a residence for divorce purposes, secure a divorce there and then return to Respondent in Virginia, and that they would then re-marry Petitioner left Yorktown, Virginia where she and Respondent had lived together since the February marriage; she remained in Florida a short time and then went to Pennsylvania. Later she returned to Florida for a short period Whatever time she spent in Florida in 1943 was solely for divorce purposes and with no intention on her part to establish a bona fide residence there. She intended to be physically present there only long enough to obtain her divorce. This was understood and agreed upon by the Respondent here. (F. F. 2). September 10, 1943 Petitioner was granted a divorce in the Circuit Court of the Eleventh Judicial District in and for Dade County, Florida. (F. F. 2). The Findings of fact clearly indicate that there was no reliable evidence that "petitioner's husband appeared and participated" in the Florida divorce proceedings. The Findings of fact make no mention whatever of her husband appearing or participating in any way. (F. F. 2). Two or three days after the decree of divorce, Petitioner and Respondent met in Newport News, Virginia. Respondent at that time was stationed on Naval duty at Yorktown, Virginia. From then until December 18, 1943,

the parties saw each other every day and on December 18, 1943, went through another marriage ceremony at Elkton, Maryland. (F. F. 3).

On March 29, 1949 Petitioner here instituted an action for separate maintenance against Respondent here, in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in which it was alleged that the parties were married at Elkton, Maryland, December 18, 1944 and were at the time of the aforesaid separation action residents of the city and County of Honolulu, Hawaii. In this action a decree was entered April 7, 1949, permitting Petitioner to live separate and apart from Respondent for a period of two years and ordering Respondent to pay Petitioner here monthly maintenance. (F. F. 3 and 4).

In December, 1949 in the Windsor County Court, Vermont, while the aforesaid maintenance order was still pending and extant, Respondent here filed a petition for annulment as to both of the marriages between the parties, namely, that of February, 1943 and December, 1943. The Trial Court found judgment that the purported marriage between the parties in February, 1943 was void. The Trial Court also found that Petitioner here never intended to establish a residence in the State of Florida; never did establish a residence in the State of Florida; and only spent time in the State of Florida solely for the purpose of obtaining a divorce. In substance and effect, the Trial Court's finding was that the parties fraudulently attempted to confer divorce jurisdiction in the Florida courts. Nevertheless, the Trial Court considered itself bound by the said Florida Court's decree of divorce with respect to matters of residence and domicile of the parties and refused to annul the void marriage of December, 1943.

The Supreme Court of Vermont, because Respondent has had a bona fide residence in the County of Windsor,

State of Vermont since 1940, and because the Florida decree of divorce rendered in 1943 was procured by fraud with respect to residence which went to the jurisdiction of the Florida Court, refused to give full faith and credit to said Florida decree under authority of the judgment of this Court in the case of *Williams* vs. *North Carolina*, 325 U. S. 226.

While in some instances the use of the words "domicile" and "residence" are considered synonymous and interchangeable, they cannot in fact be used haphazardly in matters having to do with the jurisdiction of the Courts in divorce and annulment proceedings.

In the sense that at different times the parties hereto lived in the State of Virginia and in Hawaii, they did at such times have residence in those jurisdictions, but they were not, and it is not claimed that they were, legal domiciliaries or legal residents of those jurisdictions in the sense of being citizens thereof. In fact, from 1940, Respondent here was a citizen of the State of Vermont in that he had and maintained a legal residence in the County of Windsor, State of Vermont and had never at any time declared or exhibited an intention of acquiring legal domicile or residence elsewhere.

Petitioner here did on several occasions actually present herself in the State of Florida during the year 1943 and for such periods lived in Florida. However, it was her avowed and admitted intention *not* to reside in Florida, but to be there only as necessary to procure a divorce and to leave the State of Florida immediately upon procurement of divorce. Certainly she was never capable of claiming under such circumstances that Florida was her state of legal domicile or residence, nor even that she acquired such residence as intended by the Florida law to confer upon the courts of that state jurisdiction over her person for the purpose of divorce. Under such cir-

cumstances, she and her husband could not possibly confer jurisdiction upon the Florida Court. So far as the Record discloses neither Petitioner nor her then husband had ever before even visited the State of Florida.

Under the Findings of Fact by the Trial Court of Windsor County, Vermont, admitted by Petitioner herein, a fraud attempting to confer jurisdiction upon the Florida Court was perpetrated. Under the circumstances, it cannot be claimed and indeed is not herein argued by Petitioner, that the Florida Court ever had jurisdiction over Petitioner and her then husband in 1943 to grant a divorce. Indeed Petitioner is in the position of virtually admitting that a fraud as to the jurisdiction was perpetrated on the Florida Court, but attempts to invoke the res judicata theory to avoid the application by the Supreme Court of Vermont of the clear principles laid down in the Second Williams case. For the purpose of this proceeding, it makes no difference what the legal domicile of the Petitioner and her first husband might be. The only pertinent point is that they were not domiciled in Florida nor had either one of them established a bona fide residence in the State of Florida prior to the divorce decree of 1943. Nor does the record show in the Findings of Fact that Petitioner or her husband even remotely approached creating a bona fide residence in Florida or that the husband participated in her fraudulent proceedings in such fashion as to permit this case to come within the narrow limits of *Sherrer* vs. *Sherrer*, 334 U. S. 343, and *Coe* vs. *Coe*, 334 U. S. 378.

Under the circumstances, as disclosed by the Record here, the Supreme Court of the State of Vermont seemingly acted entirely in accord with both the language and spirit of the so-called Second Williams case, that is, *Williams* vs. *North Carolina*, 325 U. S. 226, 89 Lawyers Ed. 1577, wherein the Court said:

"All the world is not party to a divorce proceeding. What is true is that all the world need not be present before a court granting the decree and yet it must be respected by the other forty-seven states, provided—and it is a big proviso—the conditions for the exercise of power by the divorce-decreeing court are validly established whenever that judgment is elsewhere called into question. In short, the decree of divorce is a conclusive adjudication of everything except the jurisdictional facts upon which it is founded, and domicile is a jurisdictional fact. To permit the necessary finding of domicile by one state to foreclose all states in the protection of their social institutions would be intolerable."

and again,

"But those not parties to a litigation ought not to be foreclosed by the interested actions of others; especially not a state which is concerned with the vindication of its own social policy and has no means, certainly no effective means, to protect that interest against the selfish action of those outside its borders."

and again,

"As to the truth or existence of a fact, like that of domicile, upon which depends the power to exert judicial authority, a state not a party to the exertion of such judicial authority in another state but seriously affected by it has a right, when asserting its own unquestioned authority, to ascertain the truth or existence of that crucial fact."

Reduced to a simple straight-forward consideration, the Supreme Court of the State of Vermont, in the instant case, exercised its proper jurisdiction to consider the petition for annulment of marriage filed by one of its own citizens who maintained an unquestioned and unchallenged domicile and residence in the State of Vermont for several years prior to the void marriage and continuously thereafter up to and including the time when

the petition for annulment was filed and in acting upon the unchallenged and uncontradicted facts found in its judgment that Florida undoubtedly and indisputably did not have jurisdiction over the Petitioner and her husband in the 1943 divorce proceedings.

Thereupon, under the plain and unmistakable doctrine of the Second Williams case, the Vermont Supreme Court refused to entertain said fraudulent divorce, procured without proper jurisdiction of the Florida Court, to stand as a defense and impediment against annulment of the void marriage entered into between the parties hereto in December, 1943 following the invalid Florida divorce.

Point One

The Respondent contends, as does the Petitioner, that Florida is the final arbiter of the criteria of domicile or residence of its citizens. (Page 5 Petitioner's Brief). Indeed, the Vermont Court in passing upon the cause, found the Florida law to require actual bona fide residence which in turn required an intention on the part of complaining party to reside there permanently. Florida, herself, thus fixed and determined this test. The Findings of Fact show the Petitioner did not meet the test. In the case of *Wade* vs. *Wade* 93 Florida 1004 the Court said:

> "The word 'reside' has reference to the complainant's legal residence, which means the place which an individual has made the chief seat of his household affairs or home interests, from which, without some special mission, he has no intention of departing; from which when he has departed, he is considered to be away from home; and to which, when he has returned, he is considered to have returned home."
>
> "A legal residence or domicile in this State may be acquired by one who, coming from another state or

country, actually lives in this State, with the intention of permanently remaining here. In such a case a domicile by choice is established. Legal residence consists of fact and intention. Both must concur."

"The mere intention to acquire a new domicile, unaccompanied by actual removal, avails nothing; neither does the fact or removal avail without the intention."

Again, in *Chisholm* vs. *Chisholm* 98 Florida 1197 the Appellate Court of Florida said:

"Two years' residence required of a complainant in suits for divorce means a legal residence, a place of domicile or permanent abode; a place which complainant makes the chief seat of his household affairs or home interests."

"The prerequisite two years' residence in this State of the complainant in a suit for divorce (except when the cause is based upon adultery of defendant) is jurisdictional and must be both alleged in the bill and established by proof, and an admission thereof by the parties in the pleadings is ineffectual as a substitute for proof, and it is not an instance in which facts going to the jurisdiction may be effectually admitted by the parties."

However, the important thing to remember is that, not only is this the law of Florida, but that the Vermont Courts *found* it to be the law of Florida and gave it effect. In other words the Vermont Court did exactly what the Florida Court would have been compelled to do, if it had not been blinded by the false and perjured testimony of the Petitioner here, that is namely, to find itself without jurisdiction in the matter.

Therefore, this is not a case of one state contesting the rights or interests of another, but rather a case of one state giving a foreign decree the same effect that it was entitled in the state where it was rendered. The

Petitioner here argues that that Florida decree could not be attacked either directly or collaterally in Florida. Not only is this an absurd argument but it is certainly not the law of Florida as found by the Vermont Court nor does the Petitioner support such an argument with any authority. In the case of *Chisholm* vs. *Chisholm* supra the Florida Court held that a judgment void for lack of jurisdiction can be set aside at any time.

Point Two

It is the contention of the Respondent here that the assertion of the Petitioner that the divorce decree she secured in Florida was valid under the Florida law is without merit. In the annulment suit brought in the Vermont Court, the Petitioner here was a party defendant. She personally appeared and contested the cause. One of the issues was whether the Florida divorce decree was valid under the laws of Florida. This issue was eventually determined by the Supreme Court of Vermont against this Petitioner and in favor of this Respondent. Therefore the fact that her Florida divorce decree, rendered by reason of her perjured testimony was and is void, is a fact judicially determined and she is barred from relitigating the same again.

The Petitioners' real contention is that her divorce decree is valid in Florida, therefore is entitled full faith everywhere else. The difficulty with this claim is that the contrary has been judicially determined against her and so far as this Court is concerned it is bound by the findings of fact made in the Courts below. (See *Chicago Life Ins.* vs. *Cherry* 224 U. S. 25; *Baldwin* vs. *Iowa Traveling Men's Assn.* 283 U. S. 522; *Coe* vs. *Coe* 334 U. S. 378; *Sherrer* v. *Sherrer* 334 U. S. 343; *Estin* v. *Estin* 334 U. S. 541.)

Point Three

The Respondent says that it should be borne in mind that the Vermont Courts have not attempted to relitigate the issue here between the Petitioner and her former husband. What the Vermont Courts actually did was to determine the real status of the Respondent here and the Petitioner. It is obvious that their marital status depended upon the marital status between the Petitioner and her first husband and in doing this they found and applied the law of Florida. Certainly Florida could have no complaint about a sister state, in the far distant North, respecting her laws and doing whatever she can towards helping Florida enforce her laws. To hold the Petitioner's contention sound would be putting the stamp of approval upon fraud and perjury and would be telling all other states that *all* judgments and decrees, even those admittedly void, under the very laws which they were purportedly rendered, would require full faith and credit. If this principle is adopted, the very fundamentals of our judicial system would come tumbling down for the only pillars of support in the final analysis are truth in our Courts and honesty in our evidence.

Point Four

It appears to be the contention of the Petitioner here that under *Coe* vs. *Coe* 334 U. S. 378, the Florida decree is not subject to attack anywhere by anyone. Even assuming that this fact had not been decided adversely to her in the Vermont Court, does it appear reasonable to believe that a court can be tricked and deceived into giving a valid decree which it could not and would not give but for the deceit and mistaken belief? Does or can fraud and perjury supply jurisdiction in cases where the law has withheld it? What the Petitioner here is contending is that once fraud is perpetrated and perjury committed the effects cannot be undone. For authority

see *Coe* vs. *Coe* supra and *Sherrer* vs. *Sherrer* supra. An examination of these cases shows them to be of no help to her. In *Sherrer* vs. *Sherrer* the Florida decree was not attacked on the premise that it was void in Florida, as in the instant case. As a matter of fact the Florida divorce was assumed by both parties and this Court to be valid under the laws of Florida. (See 334 U. S., top of page 349.) In this connection the Court said: "That the jurisdiction of the Florida Court to enter a valid decree of divorce was dependent upon petitioner's domicile in that State is not disputed. This requirement was recognized by the Florida Court which rendered the divorce decree, and the principle has been given frequent application in decisions of the State Supreme Court."

Also in the Sherrer and Coe cases the factual situation was entirely different from the instant case. The Respondent here was not a party to the foreign divorce proceedings nor was he before the court to litigate the issues.

Another distinguishing point is that in neither the Sherrer case nor the Coe case was there any showing that the Florida decree was not valid in Florida where it was rendered. Instead, those cases turned upon the question of the rights of Massachusetts to deny full faith and credit to a judicial decree which *was* valid under the laws of Florida while in the instant case Vermont has refused full faith and credit to a Florida decree which admittedly was not entitled to full faith and credit in its own state.

It is inconceivably absurd to say Vermont should be compelled to honor a decree rendered not only by reason of false and perjured testimony but by a court powerless to act because of its own statutory limitations. If jurisdiction of courts could be enlarged by litigants' perjured testimony then jurisdiction would no longer be a matter of statutory control. The very thing that the

Petitioner here contends amounts to this proposition. It has been found as a fact that she perjured herself in regard to her domicile, yet she claims it makes no difference since her husband appeared, although the record does not show that he did appear. As a matter of fact the record shows that he did *not* appear. Assuming that he did appear this situation is no better for appearance cannot confer jurisdiction over subject matter. In the Florida case of *Taylor* vs. *Taylor* 132 Florida 694, the Court said in part: "We do not mean to hold, however, that further consideration of the question of jurisdiction is precluded, because if the circuit court was and is without jurisdiction because of fact, if it is shown to be a fact, that the complainant had not established his residence in Florida, but was in Florida only temporarily for the purpose of securing a divorce, then the general appearance of the defendant cannot confer jurisdiction on the court."

CONCLUSION

The Respondent says that in view of the foregoing law, Findings of fact and arguments that the decree of the Vermont Supreme Court should be upheld.

Respectfully submitted,

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